IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE THOTTATHIL B.RADHAKRISHNAN

MONDAY, THE 25TH JUNE 2007 / 4TH ASHADHA 1929

OP.No. 25617 of 1999(Y)

PETITIONER:

C.C.KOCHUTHRESSIA, W/O.JOHN K.P.,
KURUTHUKULANGARA HOUSE, THANAPADAM,
KANDASSAMKADAVU P.O., THRISSUR DIST.

BY ADV. SRI.JOMMY THARIAN

RESPONDENTS:
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1. STATE OF KERALA REPRESENTED BY ITS
UNDER SECRETARY, GENRAL EDUCATION,
THIRUVANANTHAPURAM.

2. THE DISTRICT EDUCATIONAL OFFICER,
THRISSUR.

3. THE DY. DIRECTOR OF EDUCATION, THRISSUR.

4. THE MANGER, K.G.M.L.P. SCHOOL, ANTHIKAD,
THRISSUR DIST.

BY GOVT. PLEADER SMT.T.B.RAMANI

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 25/06/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ORDER ON CMP NOS.43173/99 & 48491/01 IN OP NO.25617 OF 1999 Y

//DISMISSED//

25.06.2007. SD/- THOTTATHIL B.RADHAKRISHNAN, JUDGE.

APPENDIX

PETIITONER'S EXHIBITS:

EXT.P1: TRUE COPY OF THE ORDER DT.16.10.1987 ISSUED BY THE 2ND RESPONDENT.

EXT.P2: TRUE COPY OF THE JUDGMENT DT.17.2.1999 IN O.P.NO.149/93 OF THE HON'BLE HIGH COURT OF KERALA.

EXT.P3: TRUE COPY OF THE ORDER DT.13.8.1999 ISSUED BY THE 1ST RESPONDENT.

/TRUE COPY/

THOTTATHIL B.RADHAKRISHNAN, J.

O.P.No.25617 OF 1999

Dated this the 25th day of June, 2007

JUDGMENT

Petitioner was appointed as a Music teacher on 1.8.1984 as against a post that was created prior to 1969-70 and was held by a qualified and approved teacher till 26.7.1984, when that incumbent retired leading to the appointment of the petitioner on 1.8.1984, as noted above. Petitioner's appointment was approved by the AEO, but the DEO abolished that post, by treating it as an irregular action and that it amounts to restoration of a post under Sub Rule 1 of Rule 6 (b) of Chapter XXIII KER. The premise of the action was that the post governed by that rule is co terminus with the incumbent in office from the date of commence of that rule and therefore, the action taken amounts to unauthorised restoration of the post which could not be done. That abolition was made by the DEO on the basis of the review of staff fixation as per order dated 16.10.1987.

2. It is not Rule 6 (b)(2) but Rule 2 (3) of chapter XXIII that applies to the case in hand because the teacher is a specialist teacher in a Lower Primary School and not in an Upper Primary School. If that be so, the proviso to Rule 2 (3) of chapter XXIII applies to govern the case in hand. The nice distinction between the wording of the proviso to Rule 2 (3) and the proviso to Rule 6 (b)(1), as noticed by the Division Bench of this Court in **Joji** v. **Joint Director of Public Instructions** [2002 (2) KLT 393], is that while the post falling under Rule 6 (b)(1) is co terminus with the teacher holding the post ceasing to be in office, the proviso to Rule 2(3) keeps the post already sanctioned to continue without depending on the teacher then in office ceasing to be so. This proposition, as noticed in para 13 of **Joji's** case (supra), is in no manner watered down by the later decision of the Full Bench of this Court in **Jolly** v. **State of Kerala** [2003 (2) KLT 192] or of the decision of the Apex Court in Civil Appeal No.10409/95 referred to in **Joji's** case (supra).

3. For the forgoing reasons, the decision contained in Ext.P3 refusing the request of the petitioner for reinstatement in service does not stand.

In the result, this writ petition is allowed ordering the immediate reinstatement of the petitioner, treating the entire period of service that she would have contributed until now as reckonable for all purposes, without any entitlement for disbursal of pay until now. Exts.P1 and P3, to the aforesaid extent, are quashed. No costs.

Sd/-

THOTTATHIL B.RADHAKRISHNAN
Judge

kkb.

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THOTTATHIL B. RADHAKRISHNAN, J

O.P.NO.25617 OF 1999

JUDGMENT

25TH JUNE, 2007.

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